

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
IN RE NEW YORK CITY POLICING : Docket #20cv8924  
DURING SUMMER 2020 DEMONSTRATIONS :  
: New York, New York  
: June 30, 2022  
----- : TELEPHONE CONFERENCE

PROCEEDINGS BEFORE  
THE HONORABLE GABRIEL W. GORENSTEIN,  
UNITED STATES MAGISTRATE JUDGE

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Proceedings recorded by electronic sound recording;  
Transcript produced by transcription service.

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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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THE CLERK: This is In Re New York City Policing During Summer 2020 Demonstrations, case number 20cv8924. Will counsel please state their appearances for the record, starting with the plaintiffs.

MS. LILLIAN MARQUEZ: Good morning, Your Honor, this is Lillian Marquez of the New York State Attorney General's Office on behalf of the People of the State of New York.

MR. WYLIE STECHLOW: Good morning, Your Honor, this is Wylie Stecklow on behalf of the plaintiffs in the Gray matter.

MR. ROBERT HODGSON: Good morning, Your Honor, this is Robert Hodgson from the New York Civil Liberties Union on behalf of the Payne plaintiffs.

MR. ROB RICKNER: Good morning, Your Honor, this is Rob Rickner for the Sierra plaintiffs.

MX. REMY GREEN: Good morning, this is Remy Green for the Sow and Hernandez plaintiffs. For the recording I should appear in the transcript as Mx. Green, spelled M-X-period, rather than Mr. and Ms. And I will be speaking on the redaction and withholding issue.

MS. ALISON FRICK: Good morning, Your Honor, this is Alison Frick from Kaufman Lieb Lebowitz & Frick on behalf of the Wood plaintiffs. I'll be speaking on the

1 extension issue.

2 MS. TAHANIE ABOUSHI: Good morning, Your Honor,  
3 Tahanie Aboushi appearing on behalf of the Roland  
4 plaintiffs.  
5

6 THE COURT: And for defendants.

7 MS. AMY ROBINSON: This is Amy Robinson, good  
8 morning, Your Honor. I represent the defendants.

9 MS. DARA WEISS: Good morning, Your Honor --

10 THE COURT: Just you, Ms. Robinson - oh, go  
11 ahead.

12 MS. NADINE IBRAHIM: Nadine Ibrahim, I also  
13 represent the defendants, and I will be speaking to the  
14 redaction issue.

15 MS. JENNY WENG: Good morning, Your Honor, this  
16 is Jenny Weng, I also represent the defendants.

17 MS. GENEVIEVE NELSON: Good morning, Your Honor,  
18 this is Genevieve Nelson. I also represent the  
19 defendants.

20 MR. ANTHONY DISENSO: Good morning, Your Honor,  
21 this is Anthony DiSenso. I also represent the defendants.

22 MS. RACHEL KAUFMAN: Good morning, Your Honor,  
23 this is Rachel Kaufman, I also represent defendants.

24 MR. STEPHEN McQUADE: Good morning, Your Honor,  
25 Stephen McQuade, I represent the Detectives Endowment

1  
2 Association, one of the three union intervenors in the  
3 case.

4 THE COURT: Any other intervenors present?  
5 Okay, let me just ask initially since it's a little  
6 disturbing we're starting 15 minutes late. Ms. Ibrahim,  
7 what was the impediment in at 11?

8 MS. IBRAHIM: Your Honor, I believe a lot of us  
9 that are on this call are newer to the team, and we did  
10 not have the correct dial-in information. We used the  
11 number that was on the docket, and I believe that was the  
12 incorrect or an older number. But we promptly joined this  
13 call as soon as we had the right dial-in information.

14 THE COURT: Okay, well, hopefully that won't  
15 happen again. My order was pretty clear that that number  
16 was for the public only.

17 MS. IBRAHIM: I apologize, Your Honor, it won't  
18 happen again.

19 THE COURT: Okay, all right, we'll move on.  
20 Okay, we're here initially on a letter from Mx. Green,  
21 586, followed by, the docket entry is 605, 618, and 614.  
22 We'll do this in two pieces. One is redactions within a  
23 document, and the other is withheld documents --

24 MX. GREEN: Your Honor, before we get into  
25 that, can I do a bit of housekeeping which is defendants

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1 have not made an application to see all the documents we  
2 filed with the Chambers as is required by the Court's  
3 individual practice 2E. I anticipate in both categories  
4 we're going to want to talk about the contents of the  
5 documents today. So given that defendants responded to  
6 our letter, which explicitly noted that requirement, but  
7 didn't make an application and for that matter didn't make  
8 an application on the moving letter on June 7, I think it  
9 makes some sense to say that we are free to discuss the  
10 contents of the supposedly confidential documents today  
11 and, you know, maybe deal with whether copies should be  
12 filed on the document separately.

13  
14 THE COURT: Ms. Ibrahim, do you have a position  
15 on this?

16 MS. IBRAHIM: Your Honor, again, I recently was  
17 assigned this issue. I think that, I think that that  
18 should be okay with us.

19 THE COURT: Okay.

20 MS. IBRAHIM: To the extent that the documents  
21 contain sensitive information, I don't believe that that  
22 should be said on the record today, but more generally  
23 speaking about the documents should be okay.

24 THE COURT: All right, listen, as this is a  
25 matter of substantive law, what is actually in those

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documents is irrelevant to anything I'm doing today. So, Mx. Green, I don't think there's any need to discuss them. If you feel there's a need at some point, let me know.

MX. GREEN: Fair enough, thank you, Judge.

THE COURT: All right. So on the redactions within the document, I mean this is easy. There are to be no redactions of portions of the document, that's improper. It shouldn't have happened. I don't understand why it happened.

Now, that being said, there appears there's some things that were called non-responsive that the City really meant something else like personal information or something like that or, and this is maybe one possible exception to what I just said. And the City seems to raise this. I did make some rulings about disciplinary history and things that could be redacted with respect to disciplinary history, and those, assuming my instructions were followed, are proper. So, Mx. Green, where do you think we are on this and given what I just said and what I said about disciplinary history and, you know, phone numbers or things like that?

MX. GREEN: Yes, Your Honor. I think the answer is that's exactly what we've been arguing. So I think we are of a mind with the Court with perhaps a



1  
2 footnote that - or let me directly address what you said,  
3 Judge, which is I don't think that there's any  
4 disciplinary history in what we've identified here, I  
5 think we (indiscernible) or to the extent that there is,  
6 we agree you've already ruled on that where the objection  
7 has been made to providing it as personal information, you  
8 know, that is an appropriate privacy or relevance  
9 redaction where that objection has been made.

10           On the phone numbers, one of the issues is that  
11 defendants apparently automated this without telling us  
12 that that's what they were going to do, and so while I  
13 think if they had been, you know, thoughtful in applying  
14 phone number redactions, that would, you know, make sense.  
15 What they've done is anything that is nine digits got  
16 redacted. If it's certain formats, so there are case  
17 numbers redacted. There are witness phone numbers that  
18 are not private redacted. I mean I think I've seen my own  
19 phone number redacted as well as Mr. Rickner's phone  
20 number. So these are not - I think the problem is a lack  
21 of review or quality control on how they've done that.  
22 But the basic principle we don't disagree with.

23           THE COURT:   Okay, so what's - I guess I'm not  
24 understanding what the City has already said it's going to  
25 do and what they've said is unacceptable to you.

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2 MX. GREEN: I mean they are, they are unwilling

3 to remove anything was their last position. So that's

4 what's unacceptable to us. As the Court said, there just

5 shouldn't be redactions other than some very minor things,

6 and there are massive redactions.

7 THE COURT: Okay, I mean I thought --

8 MS. IBRAHIM: Your Honor --

9 THE COURT: -- aside from nine-digit numbers

10 you mean.

11 MX. GREEN: Yes, yes. I mean, yes, the nine-

12 digit number issue I think that's kind of a side show.

13 Ultimately --

14 THE COURT: I want to put the nine-digit number

15 issue to the side for the moment, you know, because I

16 don't think there's a rush on that, and if --

17 MX. GREEN: Of course not.

18 THE COURT: -- there's something you need right

19 away, you can just ask for it. So let's just put that

20 aside on the assumption that there will be some process

21 put in place either by your asking or them reviewing. I'm

22 not even sure I'll deal with it today. I hope you can

23 work it out, but if I have to, I will.

24 So let's talk about everything else, and, Ms.

25 Ibrahim, if you wanted to say something, go ahead.

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2 MS. IBRAHIM: Yes, Your Honor, the City, even  
3 prior to plaintiffs' filing their letter motion, had  
4 already agreed to re-review all of the generic NR  
5 redactions within documents and remove any NR redactions  
6 that were not otherwise protected. So I --

7 THE COURT: What do you mean by protected?

8 MS. IBRAHIM: Either subject to a privilege or  
9 a privacy concern.

10 THE COURT: Okay, so --

11 MX. GREEN: Your Honor, though that --

12 THE COURT: Go ahead.

13 MX. GREEN: The problem with that, and this is  
14 why I want to talk about the specific examples, is all you  
15 have to do is look at the one that they produced to know  
16 that that's, I mean I'm trying, I'm struggling to find a  
17 word for it.

18 THE COURT: No, no, no, Mx. Green, this is not  
19 the point though. I'm willing to assume that every  
20 redaction here is responsive, so that's not the issue.  
21 The issue is whether they should be allowed to review for  
22 privilege or not --

23 MX. GREEN: Right.

24 THE COURT: -- and how much time we give them  
25 to do it. That's the only issue.

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2 MX. GREEN: Got it, got it. Okay, so I mean  
3 the answer I think is they already reviewed for privilege.  
4 If it was a privilege, there are expansive privilege  
5 redactions, and that's not what we're here to talk about  
6 today. I assume --

7 THE COURT: Let me just stop you --

8 MX. GREEN: -- if there had been a privilege -  
9 go ahead.

10 THE COURT: Let me just ask (indiscernible),  
11 what is your timing on this, what do you need to review  
12 for?

13 MX. GREEN: I mean depositions starting  
14 immediately.

15 THE COURT: No, no, no, I'm asking Ms. Ibrahim.

16 MX. GREEN: Oh, I'm sorry.

17 THE COURT: What is your timing, what is your  
18 timing, what do you need to review for?

19 MS. IBRAHIM: Your Honor, if I could just  
20 explain that when the reviewers were initially reviewing  
21 these documents, when they found something to be not  
22 responsive, they did not go the extra step to review it  
23 for privilege. So those documents have not been reviewed  
24 for privilege. Our estimate --

25 THE COURT: You did redact some things for both

1 as being non-responsive and privileged, did not you?

2 MS. IBRAHIM: Yes, Your Honor, but for the  
3 majority of this, the redactions that we're talking about  
4 here, they were not reviewed for privilege or for privacy  
5 concerns. If the reviewer found it non-responsive, then  
6 they just redacted it as non-responsive.  
7

8 Our timeline for this, Your Honor, is we  
9 anticipate it would take five weeks for us to re-review  
10 all the NR redactions within documents as well as the  
11 about 2,000 standalone email attachments. So re-review  
12 for all --

13 THE COURT: All right, well, okay, the five  
14 weeks starts June 15, so I'm not saying I'm giving you  
15 five weeks, but that was the date you said it would take  
16 five weeks.

17 MS. IBRAHIM: Yes.

18 THE COURT: So we're already two weeks into  
19 your five weeks. I'm not sure I'm going to give you all  
20 that time. I will give you a 502(d) order which says that  
21 if you make a production that turns out to be privileged,  
22 you're going to have a chance to argue that it's not a  
23 waiver of any kind. But I'm going to get to your timing  
24 when we get to the end of this.

25 MS. IBRAHIM: Okay.

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THE COURT: I'm not sure there's anything else to do on that. Mx. Green, I'll hear from you if there's anything.

MX. GREEN: No, I think that addresses it. You know, there are other redaction issues but we have not raised them in this motion.

THE COURT: Okay. All right, so now we have the withheld documents which I have mentally divided into two parts as I think the plaintiffs did. One is those that appear as attachments to emails. And the other that were just standalone documents that seem to be unconnected to anything else.

Let me just deal with the unconnected ones. So I don't understand why one tells the other side that there's a - I assume the City has several billion non-responsive documents in its files. What made you pick out these 395?

MS. IBRAHIM: Your Honor, these 395 documents have been re-reviewed and they are all arrest reports from the same time period of the protests. There's not any related to anything related to the 2020 protests or this litigation.

THE COURT: You didn't answer my question.

MS. IBRAHIM: Your Honor, I think what had

happened initially was that when we asked for the arrest reports for the period of the protests, they sent everything that was from that time period because there was no time to parse through it and look for things that were protest related versus non-protest related. And that's why that happened. And I believe someone from our e-discovery, our e-discovery attorney might speak to this a little bit better than I do, Mr. DiSenso, he's on the call as well.

MR. DISENSO: Yes, Your Honor --

(interposing)

THE COURT: Go ahead, Mr. DiSenso.

MR. DISENSO: I was just going to add, Your Honor, I think initially this was just a production mistake that we weren't aware of until (indiscernible) by plaintiffs.

THE COURT: Okay --

MR. DISENSO: And that's --

THE COURT: -- Ms. Green, is there anything - anything else we need to do on these 395?

MX. GREEN: Your Honor, I think one thing that we just don't know is whether these might, for example, have charges that the NYPD might think is looting which they said was connected to the protests but obviously

1 wouldn't be protest related. You know, I think our -  
2 they're responsive to the requests as written because the  
3 request asks for all arrests during the time period,  
4 period. There is nothing saying, as I recall, that these  
5 documents are being withheld in the chart, so I think, you  
6 know, certainly our view is --

7  
8 THE COURT: I'm sorry, I didn't realize it was  
9 responsive.

10 MX. GREEN: I think it is. I mean whether it's  
11 relevant is a different question, and that seems to be  
12 what the City is saying. But we did ask for all arrests  
13 during the time period, and part of the reason we did that  
14 is we wanted to compare things like curfew arrests at a  
15 protest versus curfew arrests not at a protest. Kind of  
16 on the theory that we think that curfew arrests were  
17 pretty much only happening at protests.

18 MS. IBRAHIM: Your Honor, if I may, anything  
19 related to looting curfew arrests, things like that was  
20 already turned over. I believe these 395 documents were  
21 more things along the lines of like domestic violence or  
22 other types of arrests that were not similar to the types  
23 of arrests that are in this litigation.

24 MX. GREEN: And assuming that's true, I think  
25 we have no need for the documents. Perhaps the best



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2 solution is to have some kind of declaration confirming  
3 that, and then we could be done.

4 THE COURT: Who's the one who actually looked  
5 at these 395? Someone on this call?

6 MS. IBRAHIM: It is somebody on our team, Your  
7 Honor, but I don't believe he's a participant on this  
8 call.

9 THE COURT: All right. Can you get that person  
10 to file a declaration explaining exactly what these are  
11 and what the nature of these things are and give it to the  
12 other side?

13 MS. IBRAHIM: Yes, Your Honor.

14 THE COURT: Okay, do that within a week.

15 MS. IBRAHIM: Thank you, Your Honor.

16 THE COURT: Now, we have what I gather are  
17 4,000 or so attachments to emails. I mean I wish this had  
18 been raised sooner, and I know that plaintiffs feel it's  
19 the City's fault for not responding to requests promptly,  
20 to meet and confer, and the City hasn't denied it took  
21 them six weeks on this one. On the other hand, it seems  
22 like this was happening with productions that happened  
23 long, long ago. I don't agree with the City's  
24 interpretation of the ESI specifications, but that's  
25 different from saying that there wasn't at least some

1  
2 degree of ambiguity on this.

3           So what we need to do is solve this problem. I  
4 mean the principle has to be that attachments are  
5 responsive and, therefore, must be produced. I think  
6 we're now back in the situation of figuring out whether  
7 you get the full five weeks which ends on July 22 or  
8 whether it's going to be something sooner than that --

9           MX. GREEN: Your Honor --

10          THE COURT: Mx. Green, is there anything you  
11 want to add before I figure out a date?

12          MX. GREEN: Yes, Your Honor, and the answer to  
13 this is there are two different kinds of flip sheets that  
14 they use. They use flip sheets for privilege and non-  
15 responsive, I'm sorry, there are three kinds. There are  
16 privileged flip sheets, there are privileged and non-  
17 responsive flip sheets, and there are non-responsive only  
18 flip sheets. They've reviewed this. They have confirmed  
19 it, and I think the only protection they need is the 502  
20 order.

21          THE COURT: Well, they just, they denied the  
22 other ones that they've reviewed it for privilege. Ms.  
23 Ibrahim, have these all been for reviewed for privilege or  
24 not?

25          MS. IBRAHIM: No, they have not, Your Honor,

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and if I could just quickly speak to the examples that plaintiffs cited in their letter --

THE COURT: No, no, I don't want to do examples. The examples are completely irrelevant to me. We have a principle here. The principle is that they asked for attachments to emails, they should get the attachments to emails. I recognize there was some ambiguity in the ESI protocol. I think it should've been discussed by the City instead of just assumed. But we are where we are. I don't care what any of these documents say, so I don't know why you need to talk to me about documents in order to answer the question of whether you reviewed this for privilege.

MS. IBRAHIM: No, we did not review this for privilege, Your Honor.

THE COURT: So, Mx. Green, I don't know what to tell you. The same answer is for within document redaction.

MX. GREEN: I mean, Your Honor, I just, I don't understand the answer from defendants on that. There are three different kinds of flip sheets. How are they saying they didn't - there is a flip sheet that's in the middle of that Venn diagram that they used. I don't understand how they are saying they didn't review it for privilege

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2 when they have invoked privilege on many attachments. And  
3 invoked it alongside non-responsiveness. And I understand  
4 Ms. Ibrahim has her marching orders, but I think it's  
5 probably relevant that she was not involved in the review  
6 process.

7 THE COURT: Well, you're trying to get an  
8 answer to the question, it's a reasonable question which  
9 is how did it come about that you reviewed some documents  
10 and determined that they were both non-responsive and  
11 privileged and for others you determined they were non-  
12 responsive. You obviously conducted a privilege review on  
13 non-responsive documents. Why do you believe that the  
14 other non-responsive documents weren't subject to a  
15 privilege review?

16 MR. DISENSO: Your Honor --

17 MS. IBRAHIM: Your Honor - oh, go ahead,  
18 Anthony.

19 MR. DISENSO: Hi, Your Honor, this is Anthony  
20 DiSenso. I just want to - I'm not particularly - I'm not  
21 at this point clear on why some of the documents were  
22 marked for both privilege and non-responsiveness in the  
23 flip sheet. I can tell you that our standard review  
24 protocol, which is, you know, just based on an efficiency  
25 workflow, is that if a document is non-responsive, the

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2 reviewer is instructed to mark it as such and move on and  
3 not assess the document for privilege.

4 THE COURT: So how did some get assessed for  
5 privilege?

6 MR. DISENSO: That I don't know, Your Honor.

7 THE COURT: I mean one could guess. I mean  
8 it's - Mx. Green, it's not outside of the realm or the  
9 reason that someone would - do you do multiple layers of  
10 review, Mr. DiSenso or was it just one person?

11 MR. DISENSO: We have multiple layers of  
12 review, and it is possible, Your Honor, that some of these  
13 documents were initially coded as responsive, in which  
14 case they would've gotten a privilege review and then were  
15 changed to non-responsive on a secondary review.

16 THE COURT: All right. Mx. Green, I think  
17 we've gotten as much of an answer on this as we're going  
18 to get.

19 MX. GREEN: I mean, Your Honor, what Mr.  
20 DiSenso just said suggests that if, that dual coded  
21 documents should be very rare. In fact, there are about  
22 5,000 dual coded documents. So I don't think that  
23 explanation holds any water. It's - oh, I'm sorry, no,  
24 that number was redactions. I misread my notes. But --

25 MS. IBRAHIM: Your Honor, there's only about

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130 or so of those documents that are coded NR and privileged. So it's, you know, it's out of hundreds of thousands of documents.

MX. GREEN: But, Your Honor, I do think the broader point, if we zoom out, because I mean it sounds like the Court has decided how it wants to handle this, so I know I'm not going to convince you to do something else. But the broader point that I do think we ought to discuss is the serious quality control issue this seems to reflect. Right? Mr. DiSenso can't explain what happened here. It's a guess. And, you know, all of this to me speaks to, I don't know, just that we are not sure about anything that happened in defendant's production, and, you know, give the way some of these documents are coded, it also does to me raise the question of if there was a reviewer that marked certain of the documents that we've discussed as non-responsive, and we only know about those because they happened to be attached to emails, I'm very worried about what's in the hundreds of thousands of documents that we don't have any way of seeing how they were coded.

THE COURT: I mean you mean the billions of documents that the City holds that they view as non-responsive, whatever, yes.

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2 MX. GREEN: Not the billions of documents --

3 THE COURT: You don't know what that number is.

4 MX. GREEN: Right, well, we do know the review  
5 population in this case was 500,000 documents, and we also  
6 know the defendants reviewed it using an active learning  
7 algorithm that learned from the coding that was done. So  
8 that algorithm was taught, for example, that a video of a  
9 protest is not responsive based on what happened here.  
10 And that to me, you know, that calls into question a lot  
11 about what's going on.

12 THE COURT: Well, I mean that's a good point,  
13 and I think we should get to it. Let me just finish up on  
14 this, and then we'll come back to that. All right?

15 MX. GREEN: Understood.

16 THE COURT: Okay. All right, so you asked for  
17 five weeks from June 15. I think that's a little lengthy.  
18 I don't - you know, the more this gets delayed, the more,  
19 if we have a deposition in which some of these issues were  
20 raised, there's the possibility that someone might need to  
21 be brought back which is extremely inefficient. We're not  
22 going to be delaying depositions for reasons that I'll be  
23 explaining shortly. Depositions have to start going  
24 forward immediately and on a very heavy schedule.

25 So I'll give you, you know, let's say four weeks

1 from the date that you originally requested, June 15, that  
2 takes us to July 15, which is two weeks from today.  
3 That's to - you know, anything - you have to turn over all  
4 this. If you need a 502(d) order, you can ask me for it.  
5 If, you know, that's the most I can give you; otherwise,  
6 anything that was redacted as non-responsive has to be  
7 turned over. That means both with document redactions and  
8 the attachments, and the only exception for right now are  
9 things like nine-digit numbers or something that I made a  
10 specific ruling on like the disciplinary history  
11 redactions.  
12

13 MS. IBRAHIM: Your Honor, I actually --

14 THE COURT: Yep.

15 MS. IBRAHIM: -- more time as we didn't  
16 actually --

17 THE COURT: No, you're just going to turn it  
18 over. If you need a 502(d) order, that's the solution to  
19 this. Your request for more time is denied.

20 Any questions other than the issue you just  
21 raised, Mx. Green, any questions about the relief  
22 requested and your letter?

23 MX. GREEN: I think that the balance of relief  
24 that I would raise kind of falls into the issue I just  
25 raised. So no.



1 PROCEEDINGS 25

2 THE COURT: Okay --

3 MX. GREEN: Or, I'm sorry, Your Honor, Rule 37  
4 costs as least as to redactions.

5 THE COURT: All right, Ms. Ibrahim, any issues  
6 or questions about my ruling, putting aside Rule 37 and  
7 Mx. Green's request about the propriety of the non-  
8 responsiveness review in general?

9 MS. IBRAHIM: I just want to make sure I  
10 understand your order correctly, Your Honor. You are  
11 giving us two weeks from today to --

12 THE COURT: From tomorrow.

13 MS. IBRAHIM: From tomorrow to complete our  
14 review, and we are to give a declaration from the person  
15 who reviewed these 395 standalone documents within one  
16 week.

17 THE COURT: Yes, characterizing what they are.

18 MS. IBRAHIM: Yes.

19 THE COURT: That goes to the other side. It  
20 doesn't have to be filed.

21 MS. IBRAHIM: Okay, understood, Your Honor. I  
22 just want to be clear on that. I don't have any other  
23 issues to raise.

24 THE COURT: Okay. If you need the 502(d)  
25 order, give me a sample, you know, after first discussing

1 with the other side, and I'll issue it.

2  
3 MX. GREEN: Your Honor, I think there may even  
4 be a 502(d) order for some purpose or another already on  
5 the docket. So I think that will be very easy.

6 THE COURT: Okay, well, let's just say it's  
7 covered by it. Okay, on the issue of the propriety of the  
8 redactions. Now, this raises the issue I didn't want to  
9 start talking about on the phone call, but the City has  
10 already conceded that there are at least two items that,  
11 in fact, were responsive. So why should we not be  
12 concerned, Ms. Ibrahim, or someone else, about whatever  
13 the machine learning protocol occurred, that occurred  
14 making an error of this kind? Is this not a concern, and  
15 if so, why not?

16 MS. IBRAHIM: Your Honor, these were two  
17 examples that were cherrypicked by plaintiffs for their  
18 motion. We all know that discovery is not a perfect  
19 process, especially when we're talking about hundreds of  
20 thousands of documents and, you know, plaintiffs pointed  
21 to two examples out of hundreds of thousands of documents.  
22 Reviewer error does happen, and --

23 THE COURT: Well, was it reviewer error or was  
24 it some kind of other error?

25 MS. IBRAHIM: Well, no, Your Honor, we believe

1 PROCEEDINGS 27

2 it was reviewer error here that led to this. So, you  
3 know, we can't expect the discovery process to be perfect  
4 when we're talking about this large number of documents,  
5 and that is why we have agreed to re-review all of those  
6 documents to ensure that we are complying.

7 MX. GREEN: Your Honor --

8 THE COURT: Well, hold on a second. Hold on,  
9 hold on, hold on. Hold on. Re-review. I hope you  
10 understand, Ms. Ibrahim, you're not re-reviewing for  
11 responsiveness. That's not what I ordered.

12 MS. IBRAHIM: No, Your Honor, we are re-  
13 reviewing the documents that were withheld for non-  
14 responsiveness for privilege and other protections.

15 THE COURT: No, no, no, stop.

16 (interposing)

17 MS. IBRAHIM: -- or --

18 THE COURT: Ms. Ibrahim, Ms. Ibrahim. You're  
19 not reviewing for responsiveness. Was I not clear on  
20 this?

21 MS. IBRAHIM: Yes.

22 THE COURT: I was not clear or I was clear?

23 MS. IBRAHIM: It was awkward to me, Your Honor,  
24 but I understand now.

25 THE COURT: You're not reviewing for

1 PROCEEDINGS 28  
2 responsiveness. I've ordered they're all to be produced  
3 except for nine-digit numbers.

4 MS. IBRAHIM: I'm sorry, so you're talking  
5 about the NR redactions within documents or the withheld  
6 documents? I think that's what I'm unclear on.

7 THE COURT: Both. The redactions within  
8 documents all need to be produced and the attachments to  
9 emails all need to be produced. There's no review for  
10 responsiveness going on.

11 MS. IBRAHIM: Okay, Your Honor.

12 THE COURT: The only thing --  
13 (interposing)

14 THE COURT: -- you say you need to review for  
15 privilege or the nine-digit numbers or whatever it is.  
16 That's the only thing that you're reviewing for.

17 MS. IBRAHIM: Got it. Thanks, Your Honor.

18 THE COURT: Okay, well, maybe that'll make it  
19 easier for you to meet the deadline. Okay, so now we're  
20 back to the original question which you answered, which  
21 your answer is no longer satisfactory because you acted  
22 like you were checking your responsiveness reviews. Now,  
23 as a practical matter, and maybe this is the solution for  
24 right now. You know, Ms. Green, you're going to be  
25 getting a whole bunch of documents that they claimed were

1 PROCEEDINGS 29

2 non-responsive, and maybe it would be better to have a  
3 better record about this when you get those documents  
4 rather than trying to form a solution now. What's your  
5 views on that?

6 MX. GREEN: Your Honor, I think I have - I  
7 think I have three responses. So the first is I don't  
8 think that this is just user error, and I'd like to talk  
9 about one of the examples if I may. I don't think there's  
10 anything sensitive about it. It's the email that was  
11 attached to a training notice.

12 THE COURT: That one sentence? With that one  
13 sentence redaction?

14 MX. GREEN: Yep, yep, it was one sentence, but  
15 I think the --

16 THE COURT: Well, I'm not minimizing it. I'm  
17 just trying to identify it, that's all.

18 MX. GREEN: Oh, yes. Yes, I'm sorry. Then,  
19 yes, correct, the one sentence.

20 THE COURT: Okay, good, so you can refer to it  
21 as the one sentence redaction. Go ahead.

22 MX. GREEN: Okay, yeah, so the one sentence  
23 redaction. Defendants have I think two times with the top  
24 tiers of the quality control on their team again stated  
25 that this is non-responsive. That's just plain wrong.

1 PROCEEDINGS 30

2 Right? We asked for all documents concerning training.  
3 What the sentence is is a sentence that refers to who is  
4 responsible for a particular training. I don't see how  
5 anyone could in good faith argue that's not a document or  
6 a sentence concerning training.

7 THE COURT: Okay, Mx. Green, let me just back  
8 up for a second because I think the - we don't have to  
9 worry right now about redactions within documents because  
10 they're impermissible, and I think there may be a  
11 qualitative difference between the mental effort that  
12 someone puts in to look at a little piece of a document  
13 and decide it's non-responsive and how they view that  
14 versus how they take, what they do with an entire document  
15 to say this is not responsive. So I'm just a little -  
16 this is why I think it's better for you to get these  
17 attachments to the emails because that's more like what  
18 we're talking about.

19 MX. GREEN: Understood, Judge, and I think the  
20 only reason I'm fixated on this is because it would be one  
21 thing if what defendants did when we identified it is say,  
22 oh, yeah, that's an obvious error, especially because we  
23 quoted the document request in our initial motion.  
24 Instead what they did is they told the Court without  
25 producing it we've re-reviewed it and it's all non-

1 responsive. Right? We pointed to that one sentence and  
2 said we cannot see how anything that could possibly be  
3 under here would be non-responsive, and the attorney  
4 writing the response, writing the opposition, right, I  
5 hope that it was not just kind of an offhand decision that  
6 it was non-responsive because that would, you know, I  
7 don't think that's what's appropriate for an opposition  
8 when there's a motion to compel. I think that this is,  
9 because they argued it, a genuine reflection of what their  
10 position on responsiveness is. And that's why I want, I  
11 go to that example.  
12

13 More broadly, I think there's some issues, you  
14 know, I think you're right that the attachments we're  
15 going to get are going to be helpful but maybe a random  
16 sampling of what's called the null set which is the  
17 documents that were not produced might, you know, a small  
18 random sample of that, maybe --

19 THE COURT: Okay, when you say the documents  
20 that were not produced, you mean documents that somehow  
21 were generated - how --

22 (interposing)

23 MX. GREEN: That were in the review --

24 THE COURT: It's not the billions of documents;  
25 it's something else.

1  
2 MX. GREEN: No, it's the documents that were  
3 reviewed by defendants' outside counsel and then quality  
4 controlled by the law department team, there are about  
5 500,000 of those and marks non-responsive or, and maybe  
6 the answer is maybe a sample of both of these, or because  
7 they did machine learning, what they did is they had a  
8 priority queue that put at the front, based on what the  
9 machine had learned, documents it believes to be the most  
10 likely to be responsive. And once they - I think it was  
11 two rounds of document sets without a responsive document,  
12 they cut off review.

13 So there is a population, I think it's a  
14 relatively large number of documents that no one has put  
15 eyes on that they did collect, and the reason for that is  
16 because of the way they trained their machine. The  
17 machine told them there's a certain probability that those  
18 documents are not responsive.

19 So maybe the answer, taking a cue from what the  
20 Court is thinking about the attachments at issue here, is  
21 we should get a representative sample based on the same  
22 statistical approach defendants used to confirm their  
23 review of both set that was marked non-responsive and  
24 never produced and the set that was never reviewed because  
25 the machine said they didn't have to.



1  
2 MR. DISENSO: Your Honor, this is Anthony  
3 DiSenso, maybe I speak on this?

4 THE COURT: Yeah, go ahead.

5 MR. DISENSO: I just want to say I don't know  
6 Mx. Green is getting this information about our review  
7 process because almost none of it is correct. We did use  
8 a prioritization software, and what that does is it  
9 prioritizes the review of documents in a queue. The more  
10 likely to be responsive documents come up to the top of  
11 the queue. But it is incorrect to say we didn't after two  
12 rounds of review we stopped after not seeing any  
13 responsive document. And it's also incorrect to say that  
14 no one has evaluated the null set of documents that were  
15 left behind without being reviewed. We do our own  
16 validation on that set which includes sampling that  
17 population with a statistically valid random sample of  
18 documents, a 95 percent confidence level with a plus or  
19 minus 5 percent margin of error, to make sure that we are  
20 not leaving behind responsive documents.

21 And to Mx. Green's larger point about the  
22 sufficiency of its review, as Ms. Ibrahim stated, in  
23 discovery perfection is not the standard, and certainly it  
24 cannot be the standard with a document review population  
25 of this size. As we discussed back in November, Your

Honor, as I'm sure you'll recall, we had in place and we've staffed our review team appropriately to ensure that we could do a 10 percent quality control review with the case team, with a (indiscernible) attorneys, every day from the documents reviewed by the review team. We had consistent feedback from that QC that we provided to the review team.

And I will also mention that we worked with plaintiffs on coming up with a definition of responsiveness which was used for the review that everyone agreed on.

With respect to these two documents, these two documents that plaintiffs have selected to make this argument, it is not representative of anything.

THE COURT: Okay. This issue is not dead in my view, but I just don't think this is the place for us to deal it out. You know, whatever system you used I'm not saying it has to be perfect and it's possible your system has very responsive documents not coming through. I guess I'm a little surprised at that. But I want more information before me before I order anything else.

I want you to discuss this outside of this phone call or make yourself, Mr. DiSenso. I'm not adverse to the plaintiffs' being supplied with a very small sample of

1 the documents that sort of didn't make your cut after this  
2 process, so they have a little bit of sense of what the  
3 ones that were towards the top but were not, you know,  
4 didn't make the final cut of production. But we can't do  
5 this now. But the issue's not dead. I mean I think it's  
6 something that should be discussed. I don't know what the  
7 solutions will be if we find it. But I think the City  
8 needs to be reasonably forthcoming with the plaintiffs to  
9 provide information that will allow them to see what  
10 happened here, and I think the responsive, sorry, the  
11 documents marked as non-responsive as attachments to  
12 emails (indiscernible) supply a nice piece of information,  
13 and I just want to wait before I do anything until the  
14 plaintiffs have had a chance to see those which is not  
15 going to be very long from now.

17 Mx. Green, anything else on this before we move  
18 on?

19 MS. IBRAHIM: Your Honor, I just --

20 THE COURT: First Mx. Green and then the  
21 defendants.

22 MX. GREEN: I think the answer is - let me  
23 just, for the record, state I did not mean to imply that  
24 there was not a audit with a representative sample. I  
25 thought that's exactly what I was saying, and I apologize

1 PROCEEDINGS 36

2 if I was unclear. The only thing left to my mind is costs

3 and fees.

4 THE COURT: Okay. And, Ms. Ibrahim, you wanted

5 to say something?

6 MS. IBRAHIM: Yes, Your Honor, I just wanted to

7 seek a clarification about what we will be producing. Of

8 the 4,000 email attachments that plaintiffs have pointed

9 to that we are withholding, about 2,000 of those or about

10 half are calendar items, icons from signature blocks,

11 things of that nature. Are you ordering that we produce

12 all that as well, Your Honor?

13 THE COURT: Well, let me ask you this question.

14 My understanding is that it's easier for, it's just as

15 easy for you to produce as to not produce in a sense. If

16 you told me there was some burden to doing that and you

17 could prove that these were, you know, irrelevant to the

18 case, I might be willing to hear you. Does it really

19 matter to you?

20 MS. IBRAHIM: I think the calendar items would

21 need to be reviewed for privilege would be the only thing

22 --

23 THE COURT: Okay, and when you say calendar

24 items, I'm just wondering, you know, how do they know that

25 those are not relevant, that's what I'm trying to

1  
2 understand.

3 MS. IBRAHIM: Your Honor, I think based on the  
4 name of the subject line and the name of the item is how  
5 they were able to determine that.

6 THE COURT: Give me an example of - I mean I  
7 understand like from image like a signature block, you  
8 know, may not matter, although I suppose it could matter  
9 if it was the only identification of someone's name, but  
10 that's probably very unlikely. But maybe I'm just not  
11 thinking this through. So we have an email from someone  
12 to someone else, and whether you say there's a calendar  
13 item attached, what is that? Is the theory that this is  
14 an email saying, you know, let's meet next Thursday at 3  
15 p.m. and they're attaching their calendar so it's just  
16 duplicating what's in the email? I mean what's the theory  
17 on not producing it?

18 MS. IBRAHIM: Your Honor, I'm going to let  
19 someone from e-discovery speak to that as they reviewed  
20 them. So Anthony or Rachel.

21 MR. DISENSO: I can speak to this, Your Honor.

22 THE COURT: Mr. DiSenso.

23 MR. DISENSO: Yes, Your Honor.

24 THE COURT: Go ahead.

25 MR. DISENSO: I think the theory is that it

1 PROCEEDINGS 38

2 would be of marginal value that is our assumption because  
3 it is just a calendar notation or something akin to that,  
4 that's --

5 THE COURT: I just want to understand what  
6 we're talking about. Are we talking about literally some  
7 Outlook, you know, invitation, is that, or some other  
8 calendar --

9 MR. DISENSO: Yes --

10 THE COURT: -- type of notation?

11 MR. DISENSO: Exactly --

12 (interposing)

13 THE COURT: And that's an attachment?

14 MR. DISENSO: Well, when we're collecting  
15 emails, the Outlook calendar notation also come along, and  
16 sometimes when there are, for example, recurring meetings,  
17 these types of calendar entries can like form, they look  
18 like they're a full family of documents themselves. So  
19 each entry would be like a member of a family of  
20 documents.

21 THE COURT: You know, here's the thing I don't  
22 understand. If it's as innocuous as you say it is, then I  
23 don't understand why you would feel a need to review it  
24 for privilege, especially since you have a 502(d) order.

25 MR. DISENSO: Well, we don't know it's

1  
2 innocuous I guess is the point, Your Honor. We don't know  
3 --

4 (interposing)

5 THE COURT: So if it's not innocuous, there may  
6 be some substance in there, in which case the plaintiffs  
7 should be getting it. This is my problem.

8 MR. DISENSO: Understand, Your Honor.

9 THE COURT: Okay? I mean, remember, you have a  
10 502(d) order. It may be perfectly reasonable as an  
11 attorney to say, you know what, no one puts privileged  
12 information - this is a calendar entry that generated in  
13 some weird way, it doesn't have text in it, you don't have  
14 to worry about privilege, you know, and we're just, it's  
15 reasonable to not review it for privilege.

16 MR. DISENSO: Well, Your Honor, I think,  
17 respectfully, we would still, in order to protect the  
18 privilege, calendar entries can have text in them, they  
19 could it have privileged information. And --

20 (interposing)

21 THE COURT: Okay, well --

22 MR. DISENSO: -- Your Honor --

23 THE COURT: -- the plaintiffs should be  
24 getting, if that's the case, the plaintiffs should be  
25 getting it. So, Ms. Ibrahim, does that answer your

1  
2 question on the calendar entries?

3 MS. IBRAHIM: Yes, Your Honor.

4 THE COURT: Okay.

5 MS. IBRAHIM: In light of that, Your Honor, I  
6 would like to renew my request for maybe an additional  
7 week for this review because that is going to  
8 significantly add to our review. As the five weeks we had  
9 originally asked for did not include the calendar items  
10 and signature blocks.

11 THE COURT: Well, you're not going to be  
12 reviewing signature blocks, are you?

13 MS. IBRAHIM: I apologize, not the signature  
14 blocks, but the calendar items.

15 THE COURT: How many calendar items are there?

16 MS. IBRAHIM: I don't know what the difference  
17 or how it's split between calendar items and signature  
18 blocks, but I do know that both of those amount to about  
19 2,000 attachments.

20 THE COURT: All right, you can produce  
21 everything but the calendar items by July 15, my original  
22 date, deadline, and you can have another week for the  
23 calendar items.

24 MS. IBRAHIM: Thank you, Your Honor.

25 MX. GREEN: Your Honor, I almost want to ask to



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2 flip those and part of the reason is because higher level  
3 NYPD members don't keep memo books. Calendar items are  
4 extraordinarily important in figuring out where people  
5 were during depositions. In a motion we just filed  
6 seeking, you know, to compel certain documents that  
7 defendants should have produced but didn't in response to  
8 our document requests before depositions. You know, one  
9 of the key issues is calendar items, and it's because --

10 (interposing)

11 THE COURT: I'm happy to flip it. I guess I'm  
12 surprised because I would've assumed that the email says  
13 let's meet next week at 3 p.m. and attaches this, you  
14 know, Outlook items, and that everything you need is in  
15 the email anyway. But --

16 MX. GREEN: So I think typically --

17 THE COURT: If you want to flip it, I don't  
18 care, that's fine.

19 MX. GREEN: Okay, fair enough.

20 THE COURT: So, Ms. Ibrahim, Ms. Ibrahim, we're  
21 flipping it. All the documents have to be produced by  
22 July 22, except the calendar entries need to be produced  
23 by July 15.

24 MS. IBRAHIM: Okay, Your Honor, that works for  
25 us.

1  
2 THE COURT: Okay, last issue is attorney's  
3 fees. So, Mx. Green, I mean I've already talked about,  
4 you know, the attachments to emails --

5 (interposing)

6 THE COURT: -- and I think you've taken the  
7 hint already on that.

8 MX. GREEN: Correct, Judge.

9 THE COURT: Okay, so you want to talk about the  
10 redactions within the emails. You're going to have to  
11 somehow parse that out from your, you know, from this  
12 other thing, and you want attorney's fees for that, is  
13 that correct?

14 MX. GREEN: That's correct, Your Honor. You  
15 know, I think that they are connected issues, but perhaps  
16 we just discount by 50 percent and then recover the rest  
17 if we prevail at the end of the day, and maybe that's just  
18 the easiest way to parse this. But I do think, as the  
19 Court suggested, right, that there is no justification for  
20 redacting for responsiveness in a document review.  
21 Defendants have not cited any authority for it, defendants  
22 have not provided a justification for doing it, and, you  
23 know, I think substantively I don't think there's a whole  
24 lot of question that the calls that they are making on the  
25 specific documents at issue in this motion are not

1 substantially justified.

2 THE COURT: All right --

3 MX. GREEN: So, you know, I don't - Rule 37 is  
4 mandatory.

5 THE COURT: Ms. Ibrahim.

6 MS. IBRAHIM: Thank you, Your Honor. First, I  
7 would like to say that we had already agreed to re-review  
8 and reproduce all of these documents prior to plaintiffs  
9 filing that motion, so filing the motion was not really  
10 necessary. And additionally, Your Honor --

11 THE COURT: Hold on, hold on, hold on, hold on.  
12 This is a factual circumstance that absolutely was not  
13 presented in your letter, or at least not clearly to me.  
14 So you're saying that before the June 7 letter had been  
15 filed, you agreed to produce all redactions within  
16 documents that were marked as NR - we'll put aside, you  
17 know, nine-digit numbers and personal info and  
18 disciplinary history that I've ordered otherwise - you're  
19 saying you agreed to that before he wrote his June 7  
20 letter?

21 MS. IBRAHIM: Yes, Your Honor, we agreed to re-  
22 review and remove the improper redactions, that's correct.

23 THE COURT: Well, hold on, no, no, hold on.  
24 Hold on, hold on. Not remove the improper redactions.  
25

1	PROCEEDINGS	44
2	Did you agree to produce every single redaction other than	
3	the categories I said?	
4	MS. IBRAHIM: That's my understanding, Your	
5	Honor, yes.	
6	MX. GREEN: Your Honor, that's not true.	
7	THE COURT: Okay, Mx. Green --	
8	MX. GREEN: Yes.	
9	THE COURT: Okay. All right, Ms. Ibrahim, when	
10	you say that's your understanding, what're you basing this	
11	on?	
12	MS. IBRAHIM: I'm basing it on my conversations	
13	with the prior attorney, but I believe that what we had	
14	agreed to do was re-review all the documents which --	
15	(interposing)	
16	MX. GREEN: Your Honor, I can just quote the	
17	email.	
18	MS. IBRAHIM: Excuse me, I'm speaking, Mx.	
19	Green.	
20	THE COURT: Okay, let's Ms. Ibrahim finish.	
21	I'll give you a chance, Mx. Green.	
22	MS. IBRAHIM: My understanding was that we had	
23	agreed to re-review all the NR redactions and remove	
24	redactions that were not proper, and by that I --	
25	THE COURT: Stop, stop.	

1  
2 MS. IBRAHIM: My understanding --

3 THE COURT: We're having the same disconnect,  
4 Ms. Ibrahim, that we had about 15 minutes ago. The review  
5 I ordered is not you going through and saying, geez, is  
6 that really responsive or not. The review I have now  
7 ordered, and I say was required from day one, is just  
8 producing it all. Is that what you agreed to do?

9 MS. WENG: Your Honor, if I may, this is --  
10 (interposing)

11 MS. WENG: Your Honor, if I may, this is Jenny  
12 Weng.

13 THE COURT: Yes.

14 MS. WENG: As for the redactions is exactly how  
15 Your Honor ordered. We agreed to re-review and produce  
16 the non - and produce the - re-review and remove the  
17 redactions, except if it was privileged and we will  
18 replace it with the proper privilege explanation. And we  
19 also said, you know, the phone number issue, the phone  
20 number, if it's obvious it's phone numbers, that is  
21 personal, it's privacy, it's something that Your Honor had  
22 allowed us to redact --

23 THE COURT: Okay.

24 MS. WENG: -- those --  
25 (interposing)

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2 THE COURT: All right. The City is sticking to

3 this. Mx. Green, you have, I mean I don't --

4 (interposing)

5 THE COURT: I think we might, I might need

6 letters on this, but go ahead.

7 MX. GREEN: Your Honor, I can quote an email.

8 They're just wrong.

9 THE COURT: Go ahead. What's the date and

10 time?

11 MX. GREEN: I mean this is in a number of

12 emails - here, let's quote, the email --

13 MS. WENG: It's between - hold on, let me --

14 THE COURT: Stop, Mx. Green is talking.

15 MX. GREEN: This is from 5:38 p.m. on June 3,

16 stating, defendants stated that they would re-review to

17 ensure they are, in fact, non-responsive. That's what

18 they agreed to do. They agreed to review for

19 responsiveness. That's the issue. That's the issue we

20 brought the motion.

21 MS. WENG: I believe what you're speaking to is

22 the documents. I'm talking about the redactions.

23 THE COURT: All right, listen, we're not -

24 stop, everyone stop. We're not doing this today. The

25 City, right now, based upon the letters I've seen, I'm

1 prepared to order the sanctions for redactions only  
2 against the City. However, I will give the City a chance  
3 to prove to me by whatever means they want that prior to  
4 the filing of docket 586 on June 7 they agreed to do what  
5 I say they were required all along to do, which is to  
6 produce all of the documents with partial redactions in  
7 its unredacted form except for the nine-digit numbers and  
8 the disciplinary history. Okay? If they want to supply  
9 proof of that, they can do it, and I'll give Mx. Green a  
10 chance to respond. I mean only do this if you're sure  
11 you're right because you're just going to be charged  
12 attorney's fees for doing this if you're wrong.

14 And, you know, this is obviously not a huge  
15 rush. So when does the City want to file this letter, and  
16 I'll give a date for Mx. Green's reply?

17 MS. WENG: Your Honor, and also in addition to  
18 privilege, correct, because that's what we said. We would  
19 review for privilege --

20 THE COURT: Yeah, yeah, yeah. Yeah, yes, yes.

21 MS. WENG: Okay, okay.

22 MS. IBRAHIM: Your Honor, I mean I'm - I'm also  
23 looking at the, at a June 3 email that Ms. Weng sent to --

24 THE COURT: I'm not doing this today. I can't  
25 do this now. I can't have a factual dispute like this

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that was never presented to me. I'm giving you a chance to put in whatever you want, when do you want to do it?

MS. IBRAHIM: Okay, Your Honor. Would one week be appropriate?

THE COURT: One week sounds perfect, July 7, July 14 for any reply, and I'll give you a written ruling after that.

MX. GREEN: Okay.

THE COURT: Okay, anything else on 587 before we turn to scheduling?

MX. GREEN: Yes, Your Honor, can we get an order just directing us to meet and confer within a week on the issue with Mr. DiSenso, given, you know, as I think you know what I'm going to say, one of the issues we're having is defendants' staffing makes it impossible to have meet and confers in any timely manner, and so a court order always helps.

THE COURT: Mr. DiSenso, can you meet within the next week?

MR. DISENSO: Yes, Your Honor.

THE COURT: Okay, so within a week by July 7 you should start this discussion.

MX. GREEN: Thank you, Judge.

MR. DISENSO: Yes, Your Honor.



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1 THE COURT: Anything else on 586?

2 MX. GREEN: No, Your Honor.

3 THE COURT: From defendant?

4 MS. IBRAHIM: No thank you, Your Honor.

5 THE COURT: Okay. Let's talk about scheduling.

6 I gather it's Ms. Frick, is that right?

7 MS. FRICK: Yes, Your Honor.

8 THE COURT: Okay. All right, so I just want  
9 everyone to know that I've been in consultation with Judge  
10 McMahon on this. Our assumption had been that this could  
11 all be done by the end of the year. I just recognize that  
12 there's a lot of depositions that are expected. But  
13 there's limits to how much we can tolerate in terms of how  
14 long it's going to take.

15 I've been - the City's proposal was way too far  
16 out. December 31 was the ideal. I'm prepared to or we're  
17 prepared to accept the plaintiffs' position for fact  
18 deposition completion, there'll be some adjustment from  
19 (indiscernible), on liability experts that I'll tell you  
20 about. There are - I did a calculation, there are 185  
21 business days between next week, July 5, and March 31. If  
22 we take out the winter holidays, it's still 177 days. I  
23 recognize that there's going to be perhaps close to a  
24 similar number of depositions. What that means is you  
25

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2 need to be doing a deposition a day. Any day you don't do  
3 that, you need to recognize there's another day where it's  
4 going to be two depositions or half day with two  
5 depositions or two simultaneous depositions. But we have  
6 to start going through this and it has to be done a very  
7 tight schedule. So --

8 MS. ROBINSON: Your Honor --

9 THE COURT: I mean I assumed your position was  
10 set forth in this letter. I mean, Ms. Ibrahim - who was  
11 that? I'm sorry --

12 MS. ROBINSON: I'm sorry, this is Amy Robinson  
13 for the defendants.

14 THE COURT: Okay.

15 MS. ROBINSON: The only thing I want to say is  
16 for, you know, we have over a hundred depositions that  
17 have been noticed that still haven't been taken, and that  
18 is, according to plaintiffs, 145 deposition days. And for  
19 145 deposition days, there are going to be 145 prep days.  
20 And that just doesn't fit into the calendar.

21 THE COURT: All right, I'm well aware of that.  
22 Well, it does if you have multiple people - if you get one  
23 person taking a deposition, it wouldn't. One person  
24 dealing with all depositions it wouldn't, but if you have  
25 more than one person, then it does. The deadline's not

1  
2 going to be moved. I don't have authority to move it, and  
3 I mean you can try Judge McMahon, but she's already said  
4 she's not moving it. So it's March 31, and that has to be  
5 worked into.

6 Now, in terms of making sure that it happens,  
7 you know, you need to - I don't think doing it in little  
8 15 deposition blocks is going to work. So there - I mean  
9 I would rather have the parties figure - and the parties  
10 need to understand that this is going to happen, and I  
11 would rather have them figure out the best mechanism. If  
12 they can't, I would certainly get involved. I would think  
13 that scheduling specific individuals on specific days as  
14 far out as possible is the best way to do it, and also to  
15 schedule only through the 28<sup>th</sup> so that you have at least a  
16 little bit of leeway - February 28 - so you have a little  
17 bit of leeway for the period after that to fit in  
18 stragglers or problems or unexpected issues. I mean  
19 that's my sort of initial inclination on this.

20 I don't have, you know, specific desires as to  
21 how to control the process. If the parties are otherwise  
22 happy with how the process is going, but the second  
23 they're not happy, then I'll simply order deposition days  
24 as needed. Someone spoke. I don't know if was --

25 (interposing)

1  
2 MS. ROBINSON: It's Amy Robinson, Your Honor.  
3 I just wanted to point out that a large number of these  
4 depositions are high ranking and 30(b)(6) people who, you  
5 know, frequently get called away for emergencies, get  
6 called away for mandatory meetings. It's just very  
7 difficult to say that the Chief of Department is going to  
8 be available on such and such a day and then, in March or  
9 January or December and we can in fact accommodate that.

10 THE COURT: Well, that's why you should  
11 schedule it, that's why you should schedule such people  
12 for whatever date you need to to accommodate it. If that  
13 means November, December, then that's when you should be  
14 scheduling it for.

15 MS. ROBINSON: And another issue is that  
16 they're continuing to notice depositions. When I say a  
17 hundred, it's a hundred plus, and deposition notices  
18 continue to come.

19 THE COURT: Well, I mean I'm not saying that  
20 there should be unlimited number of depositions. I  
21 invited the City more than a year ago to come to me and  
22 say to the extent that there are, you know, issues about  
23 numbers, to the extent you want, to have some limitations  
24 on that because plaintiffs are not being reasonable, you  
25 should come to me.

Now, part of the problem has been, contrary to what the City told me, they did not, in fact, produce all documents by July 31 of 2021. So some of this, the fact that there may be stragglers popping up now may be due to document production issues that are really the City's responsibility.

MS. ROBINSON: Well --

THE COURT: That doesn't mean - hold on. That doesn't mean I'm going to be unreasonable if, in fact, there's a dispute about who should or should not be deposed, but I think we've had a very significant production to date. If we need to have a deadline for when they say they're going to add any more deponents, I think you should talk about it first. I absolutely want to be reasonable. I don't want to be unreasonable with the City. It's not the case that every single possible person necessarily gets to be deposed in a litigation. That doesn't always happen that way. On the other hand, the plaintiffs are entitled to, you know, people that are important to their case. So --

MS. ROBINSON: May I give you examples of what the people that they're noticing?

THE COURT: I'm not sure what, I'm not sure it's going to help to give me the example. What we need

1 is a process.

2 MS. ROBINSON: Okay.

3 THE COURT: If you think that there's a  
4 problem, it's got to be teed up in some fashion for me as  
5 soon as possible (indiscernible) what you're up against.  
6 I think it will help you.

7 MS. ROBINSON: Understood.

8 THE COURT: Okay, in terms of liability,  
9 there's going to be slight cutting down on that. I cannot  
10 - it can't be the case that no preparation could be done  
11 on the plaintiffs' liability experts until the very last  
12 day of depositions, and especially if we're going to be  
13 making efforts to depose people before even the 31<sup>st</sup>, in  
14 other words, we're trying to put these in by February  
15 28<sup>th</sup>.

16 So it's going to be a slight cutting down of the  
17 expert report dates. Right now we have four for the  
18 reports and then four weeks for depositions. That's going  
19 to be cut down to three, six, three, three. And that's  
20 going to take us to I think July 31. I'll be issuing a  
21 scheduling that sets all this out. Judge McMahon is going  
22 to separately set a date for class certification motions.

23 I'm prepared to talk about - I'm not sure  
24 there's anything else on the schedule. I know there's  
25

1  
2 another letter, docket 627, about the, you know,  
3 information in advance of depositions. Before we get to  
4 that, any questions on the schedule? I know you haven't  
5 seen the actual order, but I was giving you enough hints.  
6 Oh, I'm sorry, on the intervenor's demands, I'm going to  
7 give them a deadline of July 7. If something comes in  
8 after that date that justifies a late submission from  
9 discovery request, they can come to me and ask for  
10 permission if they can show good cause. But otherwise I  
11 am going to put down the July 7 date. The designation  
12 dates are fine.

13 I'm not going to put down --

14 (interposing)

15 THE COURT: -- the schedule (indiscernible)  
16 depositions because this should be an immediate process,  
17 and I mean I'm not even sure what the October 14 deadline  
18 would mean, and I don't - 15 at a time is not viable  
19 either. I think - I mean maybe what I am saying is that  
20 everyone needs to be scheduled by a certain date.  
21 Frankly, I think October 14 may be too late for that, but  
22 if the parties think that will work, I suppose I could  
23 live with that. Hold on, let me just make sure I have  
24 addressed everything else. I think I have addressed  
25 everything else, and now I'll hear from each side if

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2 there's anything else they want to say. And I think that  
3 was Ms. Robinson who was talking, so I'll hear from Ms.  
4 Robinson first and then Ms. Frick.

5 MS. ROBINSON: No, Your Honor, I mean I think  
6 you made yourself clear and that is we have issues with  
7 the noticed depositions, that we need to tee that up. And  
8 --

9 THE COURT: Okay. Ms. Frick, anything else  
10 before we get to that last issue?

11 MS. FRICK: Yeah, I'll just say that the  
12 October 14 deadline for scheduling all noticed depositions  
13 was essentially a compromised position that plaintiffs  
14 have offered. To the extent that the Court thinks they  
15 should be sooner, plaintiffs are certainly amenable to  
16 that.

17 THE COURT: Yeah, I think I may put something  
18 in sooner because I don't see how this happens unless  
19 people know - there's going to be too much temptation to  
20 just go at a preferred pace for some period, and what  
21 needs to happen is there needs to be an even pace  
22 throughout. It sounded like there were 20plt depositions.  
23 I don't know what's stopping them from happening, you  
24 know, immediately. Some of those --

25 MS. FRICK: Yes, we agree, Your Honor.



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THE COURT: Some of those the City may think, you know what, I don't want to spend a whole, I don't want to reserve a whole deposition day for those people. I know I can do each of them in half days and have half days, and that will save you some time at the end. But the pace has to be the same throughout or it can't be accomplished, and if it's whatever party is responsible for not getting it accomplished, it's going to bear the brunt of whatever sanction happens because the deadline is not going to be extended.

MX. GREEN: Your Honor, this is Remy Green. I just want to say that the Hernandez plaintiffs have actually been, and I've never done this in a case of mine before, pushing to schedule our clients' depositions, and I think we even sent the City a set of dates for everyone during the stay --

THE COURT: Okay, that's fine. That's fine. I don't really understand why it hasn't happened, but no reason it can't happen next week or immediately.

Okay, my only issue on what happens in advance is I couldn't tell from this letter whether the City had set forth what it wanted to say, whether it wanted to do it orally. I'm happy if they want to put like a letter in and then have another conference early next week, that's

1  
2 fine --

3 MS. FRICK: Yes, Your Honor.

4 THE COURT: -- I just - unless 617 I couldn't  
5 tell if this letter was jointly composed or not.

6 MS. ROBINSON: It was not jointly composed, and  
7 the City would like to be heard on it. We had - I had  
8 emailed Mr. Lieb, the author of the letter, an email  
9 yesterday asking for consent with respect to an extension,  
10 as I have document request and DRI's to respond to and a  
11 deposition to do and various things, to extend that to a  
12 week our response. And then we would like to be heard on  
13 that.

14 THE COURT: Okay, and that, you know, that's  
15 fine for the future. I'm slightly worried about the short  
16 term, you know.

17 MS. ROBINSON: Well, we're taking depositions  
18 in the short term. We have scheduled depositions --

19 THE COURT: Right, I think Mr. Lieb wanted to  
20 do this as soon as possible so that something could happen  
21 in the short term.

22 MS. ROBINSON: Yeah, things are happening in  
23 the short term.

24 THE COURT: It sounds like --

25 MS. ROBINSON: Depositions are being taken.

1  
2 And --

3 THE COURT: No, no, no, I'm not saying that  
4 depositions - I know that. I'm saying --

5 MS. ROBINSON: Okay.

6 THE COURT: -- production of documents or  
7 information or topics or whatever else, you know, I'll  
8 issue some final order after I hear from you next week,  
9 but in the short term I feel like you need to do  
10 something. I don't know if it's Ms. Lieb or --

11 MS. FRICK: Your Honor, Mr. Lieb is my partner.  
12 I drafted this letter. I'm on vacation this week, so he  
13 was just handling the emailing and the filing yesterday.  
14 But I'm fully prepared to discuss, and I know that, as I  
15 understand it, Mr. Lieb communicated the plaintiffs'  
16 position to Ms. Robinson yesterday that we would consent  
17 to, you know, an extension of one or more days rather than  
18 a week for exactly the reason that you're raising here.

19 I think the short-term solution here is that, as  
20 I understand it, we have depositions that are going on  
21 this week and next week. Plaintiffs are prepared to, you  
22 know, provide some exhibits and topics on a non-exhaustive  
23 basis, meaning we're not able, basically exactly the  
24 position that we put in the letter. And so long as the  
25 defendants, that counsel will not be instructing

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2 defendants not to answer questions about other exhibits or  
3 other topics, then I don't think we have a huge concern  
4 about the depositions that are scheduled and that are  
5 taking place this week and next week.

6 If that's not going to be defendants' position,  
7 then obviously that is a concern. We obviously don't want  
8 to have to recall people.

9 THE COURT: Okay. All right, this obviously  
10 under Rule 30 there can't be an instruction not to answer  
11 a question about anything other than for privilege. So  
12 that's easy. So it sounds like we can make it through the  
13 next week or so. So why don't we give you, I don't know,  
14 your week is running from when, Ms. Robinson, the day you  
15 spoke to Mr. Lieb?

16 MS. ROBINSON: From today.

17 THE COURT: From today, okay, July 7 for your  
18 letter, and then let's just have a conference on the 8<sup>th</sup>.

19 MS. ROBINSON: I believe I have a deposition on  
20 the 8<sup>th</sup>, but I may be able to --

21 THE COURT: That's ironic. I mean I can do the  
22 10<sup>th</sup> if you think that's better.

23 MS. ROBINSON: Okay.

24 ATTORNEY: Your Honor --

25 THE COURT: Yep.

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ATTORNEY: I believe the 10<sup>th</sup> is, well, first --

THE COURT: The 10<sup>th</sup>, yes, yes, is a Sunday.

How about the 11<sup>th</sup>? Yep, go ahead.

MS. FRICK: I just wanted to raise a concern I have that, from what I can tell on the plaintiffs' end, I think kind of helping to coordinate these issues about depositions, and it does seem like Ms. Robinson is the only person on the City who is dealing with the depositions and doing the bulk of the scheduling and the prep and the defending and I have concerns. Obviously she has expressed her concerns about that, and I wonder if there needs to be some kind of court order that we need additional staffing to actually make this happen.

MS. ROBINSON: Well, Your Honor, that's not true, and we have, we do have a staff of people working, who will be working on the pre-deposition protocol and we have several people that will be taking these, defending, taking and defending these depositions.

THE COURT: Okay, that's good to hear. I'm not going to start ordering staffing at this point. I already made clear that if either side is not doing what needs to be done to get the depositions scheduled in the way we discussed, there will be consequences. And each side is certainly to tell me as soon as possible when they see

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2 something like that coming so no one's blindsided. Okay -

3 -

4 MS. FRICK: And just the last point, the last

5 point, Your Honor, is to the extent that, you know, your

6 order sets out quite clear that there can be no

7 instruction not to answer other than privilege, I'm not

8 sure if there really even is a dispute at least in terms

9 of what plaintiffs can provide defendants.

10 THE COURT: You're talking about the long term,

11 there's no long-term dispute?

12 MS. FRICK: Well, I don't think that there

13 would be - I guess there's still a dispute on whether the

14 defendants are just refusing to provide relevant and

15 responsive information that we need to coordinate these

16 depositions. But I don't think that there is the dispute

17 on plaintiffs' obligations. Perhaps (indiscernible) we

18 should wait to see the letter, I apologizes.

19 THE COURT: Ms. Frick, you should talk, feel

20 free to talk to Ms. Robinson if you think you guys can

21 reach an agreement. And if not, I won't get a letter on

22 the 7<sup>th</sup> or someone will tell me that the conference is

23 going to be cancelled. On the 11<sup>th</sup> I have something in

24 the morning, and I have something that's going to take me

25 till about 2:45. So 3 p.m. maybe the 11<sup>th</sup>?

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2	MS. ROBINSON: That's fine for me, Your Honor.	
3	MS. FRICK: That's fine, Your Honor.	
4	THE COURT: All right, so 3 p.m. just on this	
5	issue raised in 627 whatever responsive letter there is.	
6	Ms. Frick, if you feel that whatever that letter that	
7	comes in on the 7 <sup>th</sup> it'll make my life easier to reply to	
8	it in some way, feel free to reply. Otherwise, we'll hear	
9	you orally on the 11 <sup>th</sup> .	
10	MS. FRICK: Thank you, Your Honor.	
11	THE COURT: Okay, anything else for today from,	
12	and all that's left, of course, is what we just talked	
13	about, 627, so I'll just turn to Ms. Frick, anything else,	
14	Ms. Frick?	
15	MS. FRICK: No, Your Honor.	
16	THE COURT: Ms. Robinson, anything else on	
17	this?	
18	MS. ROBINSON: No, Your Honor.	
19	THE COURT: Ms. Robinson, are you now the lead	
20	attorney on this case?	
21	MS. ROBINSON: No, Your Honor.	
22	THE COURT: Who is the lead attorney?	
23	MS. ROBINSON: I don't know who the lead	
24	attorney, I wouldn't know who I would say is the lead	
25	attorney, but I am definitely a point person for the	

1  
2 depositions, but I do have supervisors who are on the  
3 team. So I would not say that --

4 (interposing)

5 THE COURT: I mean we used to have a lead  
6 attorney. I assume that's a good thing.

7 MS. ROBINSON: Well, then, okay, then if we're  
8 talking about the lead attorney that left, now we have two  
9 that replaced her.

10 THE COURT: Okay, who are they?

11 MS. ROBINSON: And it's not me because I have,  
12 those two are supervisors. But my bosses.

13 THE COURT: Is it top secret who these two co-  
14 lead attorneys are?

15 MS. ROBINSON: The two lead attorneys would be  
16 Jenny --

17 MS. NELSON: Your Honor, this is Ms. Nelson.  
18 Jenny Weng and I are supervising the case. Ms. Weng is -  
19 if Your Honor needs a specific person as lead attorney,  
20 that would be Ms. Weng. But we're both supervising the  
21 case at the moment.

22 THE COURT: Okay, good, I have my answer then.  
23 All right, thank you everyone, and for those who are  
24 appearing, it'll be the 11<sup>th</sup> at 3 p.m. Thank you and good  
25 bye.



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MX. GREEN: Thank you, Your Honor.

ATTORNEY: Thank you, Your Honor.

MS. ROBINSON: Thank you, Your Honor.

THE COURT: Okay, thank you, everyone, good

bye.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, In Re: New York City Policing During Summer 2020 Demonstrations, docket #20cv8924, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

CAROLE LUDWIG

Date: July 6, 2022